TABLE OF CONTENTS

PAGE

COUNTER-STATEMENT OF FACTS 1

ARGUMENT OF LAW:

POINT ONE—Construction to be placed on R.S. 18:6-24 and R.S. 18:5-25 3

POINT TWO—A title in fee simple absolute can be acquired by eminent domain 4

POINT THREE—The taking of private property for private use is not permitted under the U. S. Constitution 7

THE THREE DECISIONS BELOW ARE CLEARLY CORRECT .. 9

THERE IS NO CONFLICT OF DECISION 9

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW ... 9

CONCLUSION 9

Cases Cited

Behnke v. New Jersey Highway Authority, 25 N. J. Super. 149 8

Bentley v. Newark, 108 N. J. L. 317 6

Carroll v. Newark, 108 N. J. L. 323 6

Erie R. R. Co. v. Tompkins, 304 U. S. 64 3

Fox v. Snow, 6 N. J. 12 (1950) 3

Midler v. Heinowitz, 10 N. J. 123 (Sup. Ct., 1952) 4

PAGE

Summerill v. Hunt, 25 N. J. Misc. 498 (1947) 4

State v. U. S. Steel Corp., 12 N. J. 38 8

The Texas Pipe Line Co. v. Snelbaker, 30 N. J. Super. 171 (March 8, 1954) 8

Statutes Cited

N.J.R.S. 18:5-25 .....1, 2, 3

N.J.R.S. 18:6 3

N.J.R.S. 18:6-24 ..... 3, 6

Miscellaneous

Newark Evening News, July 3, 1953 5

IN THE

Supreme Court of the United States

OCTOBER TERM—1953

No. 637

ALTA VALENTINE,

Petitioner,

vs.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, a body corporate, *et al.*,

Respondents.

Counter-Statement of Facts

The writer feels that the facts stripped of all legal conclusions are rather fully covered in the pleadings, and therefore the writer will make a succinct statement:

1. Emma Maslin owned 15 Dick Street in 1922.

2. That in 1922, following condemnation proceedings instituted by Board of Education, for the express purpose of enlarging Public School No. 11, the said Emma Maslin was awarded, and in fact paid the sum of $13,600 in 1922, which sum she retained.

3. That the Board of Education, in 1946, pursuant to statute, publicly advertised and sold at public auction the premises 15 Dick Street to the defendants Lester and Marion Lamont for the sum of $5,900, pursuant to R.S. 18:5-25.

4. That the said defendants Lester and Marion Lamont occupied and still occupy the said premises and paid all of the taxes, water rents, insurance and maintenance from 1946 to date.

5. That the title of these defendants and that of the Board of Education was never questioned until the filing of the present suit for ejectment of January 11, 1952.

6. That the Board of Education, in good faith, indicated openly its proprietary interest as confirmed by payment of taxes, water rents, insurance, maintenance and repair, and the collection of rents from the occupants of each of the houses acquired in the condemnation proceedings of 1922, down to the public sale at public auction of the said premises in 1946, pursuant to R.S. 18:5-25.

7. The plaintiff refuses to reimburse the defendant Board of Education for the $13,600 paid in the 1922 condemnation proceedings together with the taxes, insurance, water rents, repair and maintenance from 1922 to 1946, and plaintiff also refuses to pay Lamont *et ux.*

8. That Emma Maslin died intestate, a widow, on May 27, 1928, leaving her surviving as her only heir at law, Mary L. Stinard.

9. That Mary L. Stinard died intestate, on January 22, 1934, leaving her surviving as her only heirs at law, Percy L. Stinard, a son; address unknown, Alta Valentine, the sole plaintiff, a granddaughter; and Rutherford L. Stinard, a grandson, who now resides in New York State.

ARGUMENT OF LAW

POINT ONE

Construction to be placed on R.S. 18:6-24 and R.S. 18:5-25.

The writer will confine himself to the interest of the defendants, Lester and Marion Lamont, as to the defense, counterclaim and third party complaint.

The writer wishes to avoid needless repetition and analysis of the plaintiff's brief and the cases cited therein, for the simple reason that a reading of said citations will clearly indicate that neither the facts nor the law, in said citations, have any application to the present pending question and suit herein.

The attempted application of the old principle of *"stare decisis"* has in recent years been rejected by United States Supreme Court and most recently in a sparkling dissenting opinion of VANDERBILT, *C. J.*, in *Fox* v. *Snow,* 6 N. J. 12 (1950), at pages 14 and 21 to 28 inclusive.

See also: *Erie R. R. Co.* v. *Tompkins,* 304 U. S. 64.

Moreover, counsel for the other defendants, have briefed, argued and analyzed in great detail the said plaintiff's citations and have clearly and eloquently demonstrated the inapplicability of same.

The primary title is born out of the authority provided in R.S. 18:6 and R.S. 18:6-24 and entitled "Title to property vested in board" and "Purchase, holding, sale and condemnation of property"; respectively.

There is not a single decision which this writer has been able to find in spite of diligent research, wherein any title acquired by virtue of the above sections was ever determined to be one of a limited fee. A careful reading of our statute, *i.e.,* R.S. 18:6-24, will clearly show that it contains no reference whatsoever as to the limitation of the fee taken therein and thereunder.

POINT TWO

A title in fee simple absolute can be acquired by eminent domain.

The only case cited by the plaintiff to support her contention is that of *Summerill* v. *Hunt*, 25 N. J. Misc. 498, decided by Judge PROCTOR on November 25, 1947, almost one year after the sale of said premises in this litigation by the Board of Education to Lamont *et ux*, in April 1946. The above case concerns itself with a traction matter, and the only possible application or reference to the matter herein is that portion of the opinion which refers to "reverter" and that a fee simple cannot be acquired by condemnation. It is important to point out that what has been referred to herein is at best "mere *obiter dicta*". The aforesaid claim of "*obiter dicta*" applies with the same effect to the other cases cited by the plaintiff for said propositions.

The writer's contention as to "*obiter dicta*" in *Summerill* v. *Hunt*, 25 N. J. Misc. 498, has now been adopted by and specifically noted in their separate opinions (A-56 by Judge SMITH and A-72-73 by Judge GOLDMANN and by Judge OLIPHANT) which expressly overrules as *obiter dicta* in the above case as reported in 13 N. J. 569 at 581.

This brings into direct play and application the "Two Court Rule" followed by our State and United States Supreme Court as appears in *Midler* v. *Heinowitz*, 10 N. J. 123, at page 129 (Sup. Ct., 1952), which held as follows:

> "Ordinarily, after two lower courts have considered the facts and have reached concurrent findings thereon, this court will not have the occasion to make a new and independent finding unless there is such palpable error in the concurrent findings or such clear showing otherwise of a miscarriage of justice as that a new finding by us is necessary to serve the essential ends of justice.

The two court rule has long been followed by United States Supreme Court which will not 'undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.' "

The following editorial, appearing in the Newark Evening News of Friday, July 3, 1953, is appropriate at this point:

"MUSHROOMED PROCEDURE

FINDING the Chief Justice of the United States, Fred M. Vinson, a Democrat, and the new Republican Attorney General, Herbert Brownell Jr., of substantially the same opinion should be encouraging to the delegates to the President's Conference on Administrative Procedure. Out of the conference is coming no easy formula, nor can its recommendations, however general, be of quick adaptation, but it will be helpful nevertheless.

Since our own Civil War the Government has greatly expanded, and increasingly so under the impact of two world wars and the results of their aftermath. The consequence has been the creation of almost innumerable commissions, institutions and agencies, each with its own administrational procedure. Out of them has mushroomed a vast body of administrative law subject to court interpretation.

The Chief Justice wants 'cheaper and juster determination of legislation.' He cited 21,000 pages of printed record in a single National Labor Relations Board case, in which the Supreme Court already twice had ruled on the point at issue. Mr. Vinson called it 'excessive documentation.' The layman, who figures these 21,000 pages as the equivalent of 63 novels, will think it monstrous.

Attorney General Brownell pointed out that administrative agencies determine private rights—in effect make the law—'in such important and diverse fields as

transportation, communication, atomic energy, subversive activities, industrial accidents, Indian claims and milk marketing.' Four important boards and commissions in the year ending June 30, 1951, conducted 5,325 hearings, whereas but 9,878 civil and criminal cases were heard by the 215 Federal district judges. The Department of Justice is eager to relieve the burden of this administrative procedure, which President Eisenhower has shown he believes too great."

The cases which more aptly can be compared to fit the application of the facts and law for the standpoint of comparability are found in two decisions of our Court of Errors and Appeals in eloquent opinions, both written by Justice CASE, in *Bentley* v. *Newark*, and *Carroll* v. *Newark*, both reported in 108 N. J. Law at 317 and 323 respectively. Each of the aforesaid cases are fully analyzed in the brief submitted by the Board of Education and adopted by this writer.

The Court is reminded of the fact that our statutes have many separate acts for eminent domain, *i.e.*, specific ones for *"Highways"*; another for *"Railroads"*; still another for *"Canal Companies"*; also separate act for *"Street Railway Companies"*; then an act for *"Telephone Telegraph and Utility Companies"*, and most recent the *"New Jersey Turnpike"*.

The distinguishing feature between some of these acts for eminent domain, such as *"Highways"* and *"Traction Companies"* expressly provide that the fee obtained therein is but a limited use, having in mind that with the change of time *"Highways"* often times may require complete abandonment or a new and complete change of location. The aforesaid limitation and test has never been applied directly or otherwise, where property was acquired by a Board of Education for school use under R.S. 18:6-24. Those charged with the assembling of real estate for future use as to the location of schools to be erected fifteen (15)

and twenty (20) years after the acquisition of the real estate, must necessarily at the date of original acquisition, have a fee simple absolute title to said real estate. The acquisition which is often required many years before the actual building of the school, is dictated by the fact that to delay such acquisition and purchase or condemnation might often work a great injustice upon the officials in charge, not only as to the price of the land, but as to the size of it. This has been demonstrated many times in past where steps were taken to assemble the plot after much of the area has been developed, brings with it the sharp increase in the price of the original plottage with the lesser choice of careful selection of the site. Thus it follows that even where a site has been assembled, many years before the building has been decided upon, developments often arise whereby the original choice of the site with the running of time becomes less choice so that in such an event the school board must in the exercise of good government, proper administration and sound business be free to dispose of such site free of any title questions of actual or possible reverter. This question, of course, will not arise on any condemnation acquisitions after the date of our 1947 constitution, for the said 1947 constitution expressly provides that in all condemnations from 1947 on, the title obtained therein will be one of fee simple absolute.

POINT THREE

The taking of private property for private use is not permitted under the U. S. Constitution.

To permit the plaintiff a judgment would directly violate the 5th amendment of U. S. Constitution which prohibits the taking of private property without due process of law, and would also violate the provisions of our own State Constitution for the same reasons. The plaintiff in Point One of her argument cites the federal constitution in its prohibition against the taking of private property for pri-

vate use. This proposition and the application thereof is of course much broader than would be indicated by the plaintiff's attitude as well as of the exact facts of the title original and supplemental applicable thereto. The defendant urges that the plaintiff by this very action of ejectment attempts to do the very thing which is expressly prohibited by the constitution.

Moreover, questions or allegations that concern themselves with constitutionality of an act, a law, or a statute are such that must be proved by him who asserts the contention.

> See: *Behnke* v. *New Jersey Highway Authority,* 25 N. J. Super. 149, at page 170, wherein the Court stated that legislative enactment should not be invalidated by courts unless it clearly appears that organic law has been violated, and burden of showing such violations rests upon him who asserts it.

And in other recent decision of *State* v. *U. S. Steel Corp.,* 12 N. J. 38, at page 44, the Court stated that the phrase "due process of law" formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of Bill of Rights, and its asserted denial is to be tested not as a matter of rule, but rather by an appraisal of totality of facts involved in particular case.

The Texas Pipe Line Co. v. *Snelbaker,* 30 N. J. Super. 171, decided March 8, 1954.

Proceeding by pipe line company to acquire certain rights in lands of property owners for purpose of constructing a pipe line network for the transportation of petroleum products. The Superior Court Law Division, Gloucester County, held that statute authorizing pipe line company to acquire land by eminent domain for purpose of constructing pipe line network does not violate constitutional rights of property owners where they will be a public benefit from the service rendered by the pipe line company.

The plaintiff attempts by the pending action, to recapture from these defendants, free of any reimbursement, the premises 15 Dick Street, Jersey City, for which the plaintiff did actually accept, collect and retain the sum of $13,600 in 1922. If the courts are to permit such a result to be accomplished, it will not only be in direct violation of the constitutional prohibition but would also serve to effect completely a double payment or satisfaction, together with an unjust enrichment for plaintiff, as against the defendants.

The Three Decisions Below Are Clearly Correct

The written opinions supporting the three decisions rendered from court of original venue down to and through the Superior Court, Appellate Division, supplemented by final opinion and decision of our highest tribunal, i.e. Supreme Court of New Jersey sets out clearly and in great detail its basis for said opinions and decisions separately and independently determined.

There is No Conflict of Decision

The aforementioned three New Jersey Court decisions and separate opinions rendered with each, makes it apparent why questions need not be continued or labored.

There is No Important Question of Federal Law

The petitioner failed in all his arguments to sustain and carry out duty and proofs of belabored allegation of any violations of State and likewise of United States Constitution, which would entitle petitioner to allowance of writ herein sought.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

THEODORE RABINOWITZ,
Counsel for Respondents,
Lester Lamont and Marion Lamont, his wife.

Dated: May 4th, 1954

Office - Supreme Court,
FILED
MAY 5 1954
HAROLD B. WILLEY, C

3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 637.

ALTA VALENTINE,

Petitioner,

v.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, a body corporate, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

BRIEF OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY.

ROBERT H. DOHERTY,
Attorney for the Defendant Board of Education of the City of Jersey City, New Jersey,
586 Newark Avenue,
Jersey City, N. J.

CITATIONS.

	PAGE
UNITED STATES CONSTITUTION:	
Article 14, Sec. 1, Amendments	1, 3, 6
UNITED STATES COURT:	
Southern Power Co. vs. *North Carolina Public Service,* 263 U. S. 508	5
NEW JERSEY STATE CONSTITUTION:	
Constitution State of New Jersey 1844 Art. 1, Paragraph 16	4, 5
NEW JERSEY COURTS:	
Valentine vs. *Lamont,* 20 N. J. Super. 454	2
REVISED STATUTES OF NEW JERSEY:	
Eminent Domain Act (Rev. of 1900) (now R. S. 20:1-1 *et seq.*)	2
R. S. 18:5-25	3
R. S. 18:5-26	3
U. S. SUPREME COURT RULES:	
Rule No. 38	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 637.

ALTA VALENTINE,

Petitioner,

v.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, a body corporate, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

BRIEF OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY.

I.

Answers to question raised in petition.

1. We deny that the judgment of the Supreme Court of New Jersey, unexpectedly overruled all previous applicable decisions of courts in that State.

2. We deny that the judgment of the Supreme Court of New Jersey deprived petitioner of property without due Process of Law and contravened Art. 14, Sec. 1 of the Amendment to the Constitution of the United States.

II.

Summary and statement of matters involved.

The basic question for determination is the nature of the title acquired by the Board of Education of the City of Jersey City when it condemned the property in question for school purposes in 1922. The Law Division in the trial court held that the board had acquired a fee simple absolute from plaintiff's ancestor, 20 N. J. Super. 454 (1952).

On July 19, 1922 the Board of Education of Jersey City instituted condemnation proceedings pursuant to L. 1903 (2d sp. sess.) c. 1, sec. 47, as amended by L. 1922, c. 226, sec. 1 (now R. S. 18:6-24), and in conformity with the Eminent Domain Act (Revision of 1900) now (R. S. 20:1-1 *et seq.*), to acquire title to 15 Dick Street, Jersey City, and other adjacent properties, for the purpose of enlarging No. 11 School (R. 1, 2). Emma Maslin was the owner of 15 Dick Street, a one-family frame dwelling which still stands. Commissioners in condemnation were appointed and fixed the value of the Maslin property at $13,600 (R. 59). After a hearing duly held, the commissioners' report was confirmed and the board of education paid Mrs. Maslin $13,600 as the fair market value for her property. She took no appeal.

The properties needed for enlarging the school were then occupied by monthly tenants. The Board continued to collect rentals through the years 1922 to 1945, paid real estate taxes and water charges to the City of Jersey City, and bore the expense of insurance, maintenance and repair of the properties. During that entire period of time the board assumed and exercised complete control and dominion of the properties.

In September 1945 the board of education adopted a resolution declaring that the various parcels acquired by condemnation were no longer needed for school purposes, and directed that they be sold at public sale under R. S. 18:5-25 and 26. The minimum sales price for 15 Dick Street was fixed at $5,900. Defendant Lester Lamont was the successful bidder at the public sale, having bid $5,900. On March 21, 1946 the board adopted a resolution ratifying the public sale. Thereafter, on April 9, 1946 the board executed and delivered a bargain and sale deed conveying the said premises to Lester Lamont and Marion, his wife, for $5,900.

At no time during the period from 1922 to 1946 did plaintiff or her predecessors in title ever dispute the possession or title of the board of education. The same is true as to plaintiffs' possession or title from April 9, 1946 to the institution of this action. It was not until the complaint was filed on January 11, 1952 that anyone made any claim that the board had acquired no greater estate than an easement or fee simple determinable in 15 Dick Street by virtue of the 1922 condemnation proceedings (R. 59, 60).

III.

There is no basis upon which this Court has jurisdiction to review the judgment in question.

We contend there is no substantial question involved in this application because the judgment of the New Jersey Supreme Court (R. 87) is not repugnant as alleged to the 14th Amendment to the United States Constitution.

We contend further, that there is no merit to the contention of petitioner that the federal question sought to be reviewed here, was first raised in the New Jersey Supreme

Court, when that court allegedly, unexpectedly overruled previous decisions of the New Jersey Supreme Court. (Petitioner's Brief 6 last par.) We deny the method of raising them was by a petition for rehearing in that court, because reference to petitioner's brief (R. 93) under the caption of alleged applicability of the 14th Amendment shows clearly that petitioner stated and we quote "The applicability of the due process of law clause of this amendment has been implicit in this case ever since its inception". As early as January 11, 1952 when petitioner's original suit was instituted (R. 61), the petitioner raised the constitutionality of the quality of the estate that might be acquired. This is referred to by Judge Goldman in his opinion in the Appellate Division (R. 73) when he declared "There was nothing in the Constitution of 1844 limiting the quality of the estate that might be so acquired in order to fully achieve a public use—as where such use might go on forever". Judge Smith in the trial court also refers to the constitutional question herein involved (R. 46). Judge Oliphant in speaking for the highest court in the State of New Jersey on the appeal to the New Jersey Supreme Court said (R. 80) "The appeal was taken to this court • • • on the ground that the legislature was never vested with power, under the Constitution (1844), Art. 1, par. 16, to enact laws to permit the acquisition of a fee simple absolute by eminent domain".

It cannot be successfully contended by petitioner that she has been deprived of her day in court and that judgment was entered against her without due process of law under the 14th Amendment in view of the foregoing. The petitioner raised this question in the trial court, in the Appellate Division, in the Supreme Court of New Jersey and again upon re-argument in the Supreme Court, in maintaining that this defendant never acquired a fee sim-

ple absolute title to the premises in question. The contention of the appellant in this case is both novel and fantastic. The claim is made (Petitioner's Brief 7) that the Supreme Court of New Jersey has decided a federal question of substance not heretofore determined by this court. If the petitioner's contention has any constitutional merit, then the clause in the New Jersey Constitution 1844, Art. 1, par. 16, (R. 63), that "Private property shall not be taken for public use without just compensation" is meaningless. In effect, this petitioner claims that in no circumstance may a condemnor acquire a fee simple absolute title in the State of New Jersey under the New Jersey Constitution (1844) and the enabling condemnation act. The petitioner refers repeatedly to the statement that the property of A private individual cannot be taken and given to a private individual B. This statement is repeated in petitioner's brief at page 8 three times, at page 9 bottom and page 23. Although this statement is not applicable to the facts here involved, we agree with the many statements of law that such a procedure would be unconstitutional. The petitioner's whole case is founded upon this false premise that the property of A a private individual was taken and given to B. We challenge the petitioner to point out any stipulation or evidence in the record in this case, where such testimony appears.

We contend further that the petitioner in this case has failed to comply with the provisions of Rule 38 of this court that "a supporting brief may be annexed to the petition or presented separately but *it must be direct* and concise. (Italics mine.) A failure to comply with these requirements will be sufficient reason for denying the petition."

This court has held in *Southern Power Co.* v. *North Carolina Public Service Co.* in 263 U. S. 508 that a petition

to the United States Supreme Court for a writ of certiorari should make a clear, definite and complete disclosure concerning the controversy, since it is impossible for the court critically to examine the record before ruling on the application and it must rely largely on preliminary papers.

At page 23, par. 5, in petitioner's brief, there is set forth a statement that there are special and important reasons for the allowance of the writ because of the doubt and uncertainty that now prevails concerning the questions presented by the petitioner. There never seems to have been any doubt in anyone's mind except in the minds of the petitioner and her counsel.

The many cases cited by the petitioner to sustain her contention that the petitioner did not have her day in court and that the judgment of the New Jersey Supreme Court was entered without due process of law in violation of the 14th Amendment to the United States Constitution have no application to the facts in the present case.

Conclusion.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari herein should be denied.

ROBERT H. DOHERTY,
Attorney for Defendant Board of Education of the City of Jersey City, Hudson County, New Jersey,
586 Newark Avenue,
Jersey City, N. J.

4

IN THE

Supreme Court of the United States

OCTOBER TERM—1953

No. 637

ALTA VALENTINE,

Petitioner,

vs.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, a body corporate, *et al.*,

Respondents.

BRIEF FOR RESPONDENT ANTHONY LAMONT IN OPPOSITION TO PETITION FOR CERTIORARI

EDMUND S. JOHNSON,
Counsel for Respondent,
Anthony J. Lamont,
921 Bergen Avenue,
Jersey City, New Jersey.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-6511

TABLE OF CONTENTS

Cases Cited

	PAGE
Brinkerhoff v. Hill, 281 U. S. 673	6
Fiske v. Kansas, 274 U. S. 380	6
Hunt v. Summerill, 25 N. J. Misc. 498, 504	4
Missouri v. Gehner, 281 U. S. 313	6
O'Hara v. District of Columbia, 147 F. 2d 146 (U. S. Ct. of App., D. C., 1944), certiorari denied 325 U. S. 855 (1945)	1
Saunders v. Shaw, 244 U. S. 317	7
Superior Oil Co. v. Harsh, 39 Fed. Supp. 467 (District Court E. D. Illinois)	7
Wilkinson v. Leland, 2 Peters 627	7

New Jersey Statutes Cited

N.J.R.S. 18:5-25	2
N.J.R.S. 18:5-26	2

IN THE

Supreme Court of the United States

OCTOBER TERM—1953

No. 637

ALTA VALENTINE,

Petitioner,

vs.

LESTER LAMONT and MARION LAMONT, his wife, BOARD OF EDUCATION OF THE CITY OF JERSEY CITY, HUDSON COUNTY, a body corporate, *et al.*,

Respondents.

BRIEF FOR RESPONDENT ANTHONY LAMONT IN OPPOSITION TO PETITION FOR CERTIORARI

Practically the same issues attempted to be brought before this Court by the petitioner for certiorari were decided adversely to her contentions in the case of *O'Hara* v. *District of Columbia,* 147 F. 2d 146 (U. S. Ct. of App., D. C., 1944), certiorari denied 325 U. S. 855 (1945), where the Court stated that "In the absence of special circumstances it would be reasonable to presume that no estate less than absolute title is sufficient for school purposes."

Here, as in the *O'Hara* case, the petitioner for certiorari claims a reverter; there, as here, the United States Court of Appeals for the District of Columbia held that the estate acquired by the District of Columbia for school purposes was a fee simple absolute and that title did not revert back to the original owners because of non-use by the District for school purposes. In the case at bar the three New Jersey Courts which decided the case at bar, held, unanimously, that the estate acquired by the Board of Education of Jersey City, a body corporate, was a fee simple

absolute, and that when it decided that the property so acquired by condemnation for school purposes was no longer needed for the same, it was authorized to and did give a title in fee simple absolute in 1946 to Lester Lamont and his wife, the purchasers at a public sale of said premises, made pursuant to the statute permitting the sale of unneeded public school property.

Inasmuch as the petitioner has not seen fit to set forth the facts in the instant case as she should have done to give this Court a clear-cut picture of the real issues, I shall state them:

In July 1922, the Board of Education of Jersey City, New Jersey, a body politic of the State of New Jersey, endowed by law with the power of eminent domain, filed its suit to condemn the lands of Emma Maslin, situate at 15 Dick Street, Jersey City, New Jersey, contiguous to Public School No. 11, for the enlargement of that school. Mrs. Maslin was served with summons and complaint. The Court appointed condemnation commissioners (R. 2-1 to 10). The latter commissioners awarded the owner, Mrs. Maslin, $13,600.00 for her property, a one-family frame house containing 6 rooms and bath on an ordinary city lot. She neither contested nor questioned the suit to condemn her lands nor the award made by the Commissioners. The Board of Education, pursuant to said award, paid, and Mrs. Maslin accepted, $13,600.00, as the full value of her lands (R. 32-20).

On September 6, 1945, the said Board of Education adopted a resolution declaring that the premises in question was no longer needed for school purposes and ordering a public sale thereof, pursuant to New Jersey Revised Statutes 18:5-25 and 18:5-26.

On March 14, 1946, a public sale was had and the property in question sold to the highest bidder, Lester Lamont and wife, for $5,900.00. The latter went into possession thereof immediately following delivery of the Board's deed, bearing date April 9, 1946. The petitioner herein

never complained until January 11, 1952, when she filed her action in ejectment. Neither petitioner's ancestor, Mrs. Maslin, nor Mary L. Stinard, petitioner's mother, ever questioned the proceedings or the title during their lifetime. Mrs. Maslin died in 1928 and Mrs. Stinard in 1934 (R. 5-1 to 10).

In her complaint in the law action the petitioner admitted that the Board of Education had the power to condemn and acquire the said land for school purposes (R. 2-10).

Neither Mrs. Maslin, nor her daughter, Mrs. Stinard, nor the petitioner herein, ever questioned the bona fides of the condemnation proceedings. As Judge GOLDMANN, speaking for the Appellate Division of the Superior Court of New Jersey, observed (R. 74-10):

> "There is no suggestion here that the acquisition of the property in question was made *mala fides*. There is no taint of fraud or of a concealed purpose by the board to negative the *bona fides* of the acquisition. Nor is there anything to indicate that the board, in determining that the premises were no longer needed for school purposes, was actuated by any consideration other than what was in the best public interest."

Yet the petitioner seems to infer (P. 8, Petition) that in some surreptitious way these lands were taken in 1922 (over 30 years ago) from "A", without her consent (Mrs. Maslin never questioned the condemnation proceedings nor the award of $13,600.00 which she pocketed), and given to "B" in 1946, 24 years later.

The only issue in this case was: What was the quality of the estate in the said lands acquired by the Board of Education of Jersey City, through its condemnation proceedings? The trial Court—Superior Court of New Jersey, held that the Board of Education acquired a fee simple absolute (R. 57-10). On appeal to the Appellate Division of the Superior Court of New Jersey, Judge GOLDMANN in

affirming the judgment of the trial Court said (R. 75-10 to 20), speaking for a unanimous court:

> "We hold, therefore, that the Board of Education of Jersey City acquired a fee simple absolute in the Maslin premises as a result of the 1922 condemnation and that no reverter resulted from the determination of the board to dispose of the property in 1945 or from the sale and conveyance to the defendants Lamont which ensued."

The Supreme Court of New Jersey (R. 78) affirmed the trial Court and the Appellate Division of the Superior Court. The highest court expressly overruled the obiter dicta of Judge PROCTOR in *Hunt* v. *Summerill,* 25 N. J. Misc. 498, 504, on which petitioner has laid unwarranted stress. The Supreme Court, in deciding the appeal, expressly held that a fee simple absolute could be acquired through condemnation proceedings in New Jersey, and that a fee simple absolute was taken by the Board of Education in the premises in question; that it acted in conformance with the statutory requirements for the sale of property no longer needed for public school purposes, and was authorized by the said statutes to convey a fee simple absolute title on the completion of the sale held pursuant to the statutes.

The petitioner claims she has been deprived of due process of law. How? Certainly not in the primary sense. The proceedings in condemnation were regular in every sense. Petitioner's grandmother, Emma Maslin, through whom she claims, was made a party to the condemnation proceedings (R. 2-5). Commissioners were appointed who appraised the full value of her property at $13,600.00, which was paid by the Board and accepted by her. She did not contest the proceedings or the award. She and her daughter, Mrs. Stinard, died some years later and neither in their lifetime attacked the proceedings or the award, or the title. The petitioner, a resident of New Jersey, made no attempt when the property was put up for sale at public auction by the Board to question the proceedings, al-

though it was publicly advertised, but allowed the respondents, Lester Lamont and his wife, the purchasers at the public sale, to complete their contract, pay the purchase price and incur whatever expense was necessary to put the premises in livable condition. Her suit smacks of an afterthought.

The petitioner has had a full trial of her case and enjoyed two appeals, and because all have been decided adversely to her she imposes on this Court her spurious claim that the issues present a Federal question under the Fourteenth Amendment, without "particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment or decree in question." Rule 38, par. 2.

The petitioner is wrong when she says on pages 12 and 13 of her petition that *Hunt* v. *Summerill* and *Frelinghuysen* v. *State Highway Commission* were the recognized law in the State—we presume she means as bearing on the facts in the instant case—until the decision in the case at bar. We disagree and so have all three courts who heard this case. The *Summerill* case was a traction case and the *Frelinghuysen* case was a highway case. The Courts in deciding the case at bar distinguished these cases therefrom and held they had no application.

All three of the New Jersey Courts held unequivocally in the case at bar, that there was nothing in the Constitution of the State of New Jersey which prohibited the Board of Education of Jersey City from acquiring lands by condemnation in fee simple absolute, the only requirement being that just compensation be paid for the lands so taken, which was done. And that the Board could sell and dispose of any lands so acquired, at public sale, when it found that the said lands were no longer needed for school purposes.

The United State Supreme Court cases cited by petitioner have no pertinence to the issues in the case at bar.

In *Brinkerhoff* v. *Hill,* 281 U. S. 673, cited by petitioner, the Court found that the plaintiff had never been accorded "due process of law—using the term in its primary sense of an opportunity to be heard and defend its substantive right." In the case at bar, the petitioner has been accorded three hearings: Before the trial branch of the Superior Court; an appeal to its Appellate Division, and another appeal to the Court of last resort—the Supreme Court of New Jersey. One would think that her appetite for litigation might have been fully and amply satisfied by these three hearings. The writer almost hears the much-maligned Fourteenth Amendment crying out against the petitioner's attempt to seek refuge under its wings.

Mr. Justice BRANDEIS in the *Brinkerhoff* case makes the very pertinent observation, at page 680, concerning this Court's policy on the review of decisions of state courts.

> "It is true that the courts of a State have the supreme power to interpret and declare the written and unwritten laws of the State; that this Court's power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court."

Fiske v. *Kansas,* 274 U. S. 380, concerned the interpretation of a State criminal statute—the Kansas Criminal Syndicalism Act. No relevance here.

Missouri v. *Gehner,* 281 U. S. 313, was a tax case where, seemingly, the value of appellant's government bonds was not disregarded in making up the estimate of taxable net values. The Court held it to be in violation of the established rule. No relevance to the case at bar, except the following observation:

At page 320, Justice BUTLER said:

> "It is well settled that this Court will not consider questions that were not properly presented for decision in the highest Court of the State. Ordinarily, it will not consider contentions first made in a petition for rehearing where the petition is denied without more. Citing *Citizens National Bank* v. *Durr,* 257 U. S. 99, 106."

In *Saunders* v. *Shaw,* 244 U. S. 317, cited by petitioner, certiorari was granted to review a judgment of the trial Court predicated upon testimony originally ruled by it to be immaterial, concerning which the party offended against had no occasion and proper opportunity to introduce his evidence. Not relevant to the case at bar because petitioner has had every opportunity to present her case.

Wilkinson v. *Leland,* 2 Peters 627, has absolutely no relevance to this case.

The case of *Superior Oil Co.* v. *Harsh,* 39 Fed. Supp. 467 (District Court E. D. Illinois) cited by petitioner, was an injunction suit to enjoin the operation of an oil well upon a schoolhouse site where the title to the lands was questioned and the case involves construction of a lost "deed", the question of adverse possession, and a rather strained interpretation of the eminent domain statute of Illinois, and, also, whether the grant in question was by deed to the school directors "who in Illinois have no title to school property." In the case at bar the Board of Education, a body politic, enjoying the right of eminent domain, took title as a body corporate as the result of condemnation proceedings. The facts and law in the instant case are entirely different from the cited case.

This respondent respectfully submits that the petition for writ of certiorari is without substance, and should be denied.

Respectfully submitted,

EDMUND S. JOHNSON,
Counsel for Respondent, Anthony J. Lamont.